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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,767	06/06/2005	Yuki Endo	Q88255	5081
65565	7590	06/12/2007	EXAMINER	
SUGHRUE-265550			LEE, JAE W	
2100 PENNSYLVANIA AVE. NW			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20037-3213			1656	
			MAIL DATE	DELIVERY MODE
			06/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/537,767	ENDO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jae W. Lee, Ph.D.	1656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 28 March 2007.  
2a)  This action is **FINAL**.                    2b)  This action is non-final.  
3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-10 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Application Status***

In response to the previous Office actions, a non-Final rejection (mailed on 12/28/2006), Applicants filed a response and amendment received on 03/28/2007. Said amendment, added claim 10, and amended Claims 1-3, 6, 8 and 9. It is noted by the Examiner that Claims 8 and 9 were not treated on the merits in the previous Office Action because they were improperly depended from another multiple-dependent claim. Claims 1-10 are at issue and present for examination.

Applicants' arguments filed on 03/28/2007, have been fully considered, and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

The text of those sections of Title 35 U.S. Code not included in the instant action can be found in a prior Office action.

### ***Withdrawn-Objections to the Specification***

Previous objections with respect to the abstract and the use of a hyperlink, are withdrawn by virtue of Applicant's amendment.

### ***Withdrawn-Claim Objections***

Previous objection of a Claims 8 and 9 as being improperly multiply dependent is withdrawn by the virtue of Applicant's amendment.

Previous objection of a Claims 1, with respect to Akt2, is withdrawn by the virtue of Applicant's amendment.

Previous objection of Claim 3, with respect to "coding" is withdrawn by the virtue of Applicant's amendment.

***Withdrawn-Claim Rejections - 35 USC § 101***

Previous rejection of Claims 1-3 under of 35 U.S.C. 101 is withdrawn by the virtue of Applicant's amendment.

***Withdrawn-Claim Rejections - 35 USC § 112***

Previous rejection of Claims 1-7 under of 35 U.S.C. 112, second paragraph, as being indefinite for the limitation of "represented by" is withdrawn by the virtue of Applicant's amendment to "the amino acid sequence of."

Previous rejection of Claims 1-7 under of 35 U.S.C. 112, second paragraph, as being indefinite for the limitation of "Akt2" is withdrawn by the virtue of Applicant's amendment to "Akt-homolog-2."

Previous rejection of Claim 6 under of 35 U.S.C. 112, second paragraph, as being indefinite for the limitation of "binds to Akt-2, with Akt2" is withdrawn by the virtue of Applicant's amendment which deleted "with Akt2."

***Maintained-Claim Rejections - 35 USC § 112***

Previous rejection of Claims 1-7 under of 35 U.S.C. 112, first paragraph, written description, is maintained. Applicants' arguments have been fully considered but are not deemed persuasive for the following reasons. Applicants argue that a person skilled in the art can "*predict* which homologs would provide for the binding to Akt2 and have homology of 90 % or more" (italicized for added emphasis). Applicants allege that the programs described on page 30 of the specification can "*predict*" the regions provide for binding to Akt2 in any amino acid sequence with a homology of 90% of more. Inasmuch as one of skill in the art may be able to "*predict*," this provides inadequate written description with respect to the function of those *predicted* amino acid sequences, i.e., their ability to bind to Akt2. As such, Applicants have failed to describe the correlation of structure-to-function relationship in a genus of amino acid sequences in which from 1 to 10 amino acids are deleted, substituted and/or inserted in the amino acid sequence of SEQ ID NO: 2 or 4 even if such amino acid sequence has 98% sequence homology. For instance, if the two sequences have such a high sequence homology, how would a skilled artisan know which of those amino acids are "truly" conserved structurally and functionally. Without such knowledge, one would be forced to try making all mutations of every different combinations and permutations of amino acid residues in a genus of amino acid sequences in which from 1 to 10 amino acids are deleted, substituted and/or inserted in the amino acid sequence of SEQ ID NO: 2 or 4.

Previous rejection of Claims 1-7 under of 35 U.S.C. 112, first paragraph, written description, scope of enablement, is maintained.

For the same reasons provided above, the specification lacks sufficient guidance and support for a person skilled in the art to make and use the claimed invention.

### ***New Rejections***

#### ***Claim Rejections - 35 USC § 112***

Claims 8-10 are rejected under 35 U.S.C. § 112, first paragraph, written description, for the same reasons noted in the previous Office Action and herein for the same rejection of Claims 1-7.

Claims 8-10 are rejected under 35 U.S.C. § 112, first paragraph, scope of enablement, for the same reasons noted in previous Office Action and herein for the same rejection of Claims 1-7.

### ***Conclusion***

Claims 1-10 are not allowed for the reasons identified in the numbered sections of this Office action. Applicants must respond to the objections/rejections in each of the numbered section in this Office action to be fully responsive in prosecution.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

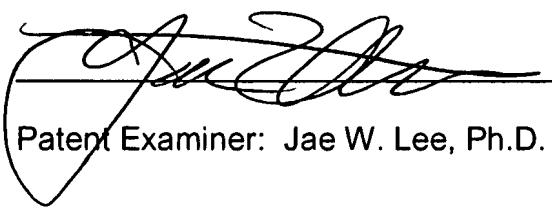
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jae W. Lee whose telephone number is 571-272-9949. The examiner can normally be reached on 8:00-4:30.

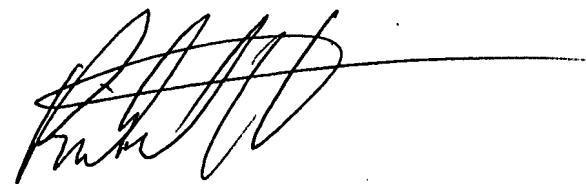
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patent Examiner: Jae W. Lee, Ph.D.



RICHARD HUTSON, PH.D.  
PRIMARY EXAMINER